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No. 85-1930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

HUMBLE EXPLORATION COMPANY, INC.,
Petitioner,

vs.

PHILLIPS PETROLEUM COMPANY,
Respondent.

On Writ of Certiorari To The
United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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June 24, 1986

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QUESTION RESTATED

Whether the court of appeals erred in not holding that the district court abused its discretion in denying petitioner's motion for relief under FED.R.CIV.P. 60(b)?

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BRIEF IN OPPOSITION

Respondent, Phillips Petroleum Company, respectfully requests that this Court deny the petition for writ of certiorari for the reasons stated below.

STATEMENT OF THE CASE

Petitioner, Humble Exploration Company, Inc. ("Humble"), filed suit against respondent, Phillips Petroleum Company ("Phillips"), on October 7, 1983, claiming that Phillips had breached a gas purchase contract by failing to connect timely some of Humble's wells and by failing to maintain a certain pressure in the pipeline. Humble also claimed Phillips made misrepresentations concerning the contract.

On December 28, 1983, the district court ordered the parties to complete discovery within four months and to submit a proposed pretrial order within six months. The court later granted a motion to extend those deadlines until May 28, 1984, and July 28, 1984, respectively. Humble failed to initiate any discovery and failed to submit a proposed pretrial order within the time allowed by the court. Consequently, the district court conditionally dismissed Humble's complaint on November 2, 1984. Upon Humble's motion, the district court reinstated Humble's complaint, again extended the deadlines for discovery and submission of the pretrial order, and set the case for trial on April 9, 1985. Humble subsequently filed a third motion for extension of time and advised the court that the case would not be ready for trial on the date previously set.

On February 25, 1985, Phillips filed a motion for sanctions because Humble had not answered Phillips' interrogatories and had twice failed to produce representatives to testify in response to Phillips' deposition notices. After conducting a hearing on Phillips' motion, the district court dismissed Humble's complaint on March 15, 1985.

Humble then filed a motion for relief from the order of dismissal under FED.R.CIV. P. 60(b)(6). In its motion, Humble conceded that the district court had not abused its discretion in dismissing its complaint, but alleged that the order of dismissal

should be set aside because there had been a change in control of Humble. Prior to filing the suit against Phillips, Humble had initiated a bankruptcy proceeding and the Brownings and Humble had jointly requested the bankruptcy court to appoint Don Navarro as trustee for Humble. Navarro was appointed trustee on November 23, 1982, and managed the affairs of the corporation until his resignation in April 1985. A constructive trust had been imposed on Humble's stock as a result of litigation brought by the Brownings against Humble's shareholder. The district court found that Humble's motion for relief from the order of dismissal was not meritorious and denied the motion on April 18, 1985.

In its appeal to the United States Court of Appeals for the Fifth Circuit, Humble again conceded that the order of dismissal had been proper, but argued that the district court had abused its discretion in denying the Rule 60(b)(6) motion. After hearing oral argument, the Fifth Circuit summarily affirmed the district court's judgment on January 30, 1986. Humble's petition for rehearing was denied on February 24, 1986.

REASONS FOR DENYING THE PETITION

1. The Petition Fails to Present an Important Question of Federal Law Meriting Review by this Court.

The real question presented by this petition is whether the court of appeals erred in not holding that the district court abused its discretion in denying Humble's motion for relief under Rule 60(b)(6). That question plainly lacks any national importance because it depends solely on the unique circumstances of this case. The lack of national importance is illustrated by the fact that the Fifth Circuit summarily affirmed the lower court's judgment without issuing an opinion on the merits.

Humble's argument, that the decisions below raise important and unresolved problems on the interrelationship of Rules 60(b) and 37(d), is without foundation. Humble's petition fails to identify any such "problems" raised by the decisions below. Indeed, it would be impossible to do so inasmuch as neither the Fifth Circuit nor the district court issued an opinion. Humble's speculation regarding the Fifth Circuit's reasoning, based on purported comments during oral argument (Petition at 9), certainly is inadequate to merit review by this Court.

The applicable standards for relief under Rule 60(b) are well established, 11 C. Wright and A. Miller, Federal Practice and Procedure §2857 (1973), and this case presents no need for reexamination of those standards.

2. The Court of Appeals Correctly Affirmed the District Court's Judgment.

The affirmance of the district court's denial of Humble's motion for relief under Rule 60(b)(6) was correct because the lower court did not abuse its discretion. Humble's motion for relief was based on the proposition that its failure to comply with the court's orders and to respond to Phillips' discovery requests should be excused because the Brownings had taken over control of the corporation after the dismissal and would rectify the omissions of prior management.

Humble's argument looks only to its own self-interest and fails to balance its interest against the public's interests in orderly procedure and finality of judgments and the prejudice caused to Phillips. *See Crutcher* v. *Aetna Life Ins. Co.*, 746 F.2d 1076 (5th Cir. 1984). Humble's failure to prepare its case for trial and its thwarting of Phillips' attempts to prepare for trial delayed the judicial process and added to the congestion of the court's docket. A claim of misconduct by prior management and a promise to do

better by new management is an unacceptable basis for reopening a final judgment. The public could not rely on the finality of a judgment against a corporation if that judgment could be set aside on a claim that prior management and its counsel had been negligent in conducting the litigation. Furthermore, had the case been reinstated for trial, Phillips would have been prejudiced in presenting its defense by the passage of time since the occurrence of the events at issue.

Lastly, Humble's claim for relief is misdirected. If Humble's prior counsel was negligent as Humble contends, Humble should seek relief from him rather than asking this Court to set aside a final judgment which was properly granted.

CONCLUSION

For the reasons stated, Phillips respectfully submits that the petition for certiorari should be denied.

Respectfully submitted,

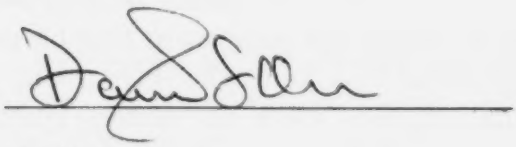
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By _____
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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I, David L. Orr, a member of the Bar of this Court, hereby certify that three copies of this Brief in Opposition were mailed, first class postage prepaid, to Mr. Thomas V. Murto, III, 4350 Beltway Drive, Dallas, Texas 75244, counsel for petitioner, on the 23 day of June, 1986. I further certify that all parties required to be served have been served.



David L. Orr